IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE FIFTH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI JUSTICE A.GOPAL REDDY

WRIT PETITION NO : 23 of 2005

Between:

1. Kolla Kondaiah, S/o. Rangaiah,

   R/o. D.No.25/2-406, New Military Colony,
   Nellore Town, Nellore District.

2. Kadiyam Balaiah, S/o. /Krishnaiah,

   R/o. New Military Colony, Nellore Town,

   Nellore District.

..... PETITIONERS

AND

1. The Mandal Revenue Officer,

   Nellore Mandal, Nellore District.

2. The Commissioner, Nellore Municipality

3. The Executive Officer, R&B Department, Nellore.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order, direction or writ more particularly one in the nature of writ of mandamus declaring the action of the respondents in seeking to demolish the shop rooms of the petitioners 1 and 2 and ground floors Door No.198 (present Door No.17/285) Ward No.17, Western side of Trunk Road, Nellore without following the due process of law as illegal, unconstitutional and violative of the provisions of the Land Acquisition Act, principles of natural justice and articles 14 and 21 of Constitution of India and consequently direct the respondents not to take steps to

demolish the above said shop rooms without following the process of law.

Counsel for the Petitioner: MR.SWARNARAVI KUMAR

Counsel for the Respondent Nos.1&3: GP FOR REVENUE

Counsel for the Respondent No.2: Standing Counsel

The Court made the following ORDER:

ORDER:

Heard the learned counsel for the petitioners, the learned Government Pleader for Revenue and the learned Standing Counsel for the second respondent.

This Court by catena of judgments held that when the Municipal Corporation or Municipality undertakes widening of the road, and in that process, proposes to demolish the structures of the citizen, necessary procedure as contemplated under the Municipalities Act or under the Gram Panchayat Act, as the case may be, has to be followed by notifying the area affected for such widening of the road. If the owners of the premises do not come forward to surrender the land, which is affected by road widening, the said land has to be acquired under the Land Acquisition Act. Without following the said procedure and guidelines issued by this Court in W.P.No.21198 of 1997 and batch dated 03.11.1998, the local authorities shall not demolish or acquire the structures of the citizen.

In view of the same, the respondent-Municipality has to follow necessary procedure as directed by this Court. They can acquire the property under the provisions of the Municipalities Act with the consent of the landlord, or if such consent is not given, the land and building, which are affected, should be acquired by invoking the provisions of the Land Acquisition Act. If the petitioners are encroached into any Government land, which is sought to be demolished, necessary notice has to be given intimating the nature of possession etc. Without following either of the procedure, as contemplated, the respondents cannot take possession of the property.

With the above observation, the writ petition is disposed of. No costs.

_____

A. Gopal Reddy, J

Date: 05.01.2005

va/pan

To

1. The Mandal Revenue Officer,

   Nellore Mandal, Nellore District.

2. The Commissioner, Nellore Municipality

3. The Executive Officer, R&B Department, Nellore.

4. Two CCs to G.P for Revenue, High Court of A.P. Buildings, Hyderabad (OUT)

5. Two CD Copies